IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ALABAMA
SOUTHERN DIVISION

UNITED STATES OF AMERICA, Plaintiff,	)	
v.	)	CR-00S-422-S
ERIC ROBERT RUDOLPH, Defendant.	)	

DEFENDANT'S MOTION TO SUPPRESS EVIDENCE AND FRUITS SEIZED PURSUANT TO WARRANT 2:98M10

COMES NOW, Eric Robert Rudolph, by and through undersigned counsel, and hereby files this Motion to Suppress Evidence and Fruits Seized Pursuant to Warrant 2:08M10[1].

BACKGROUND

On June 26, 2003, Mr. Rudolph was indicted for violations of 18 U.S.C. § 844(i) and § 924(c)(1), in connection with the bombing of an abortion clinic in Birmingham, Alabama which occurred on January 29, 1998. Following the crime, search warrants were obtained and executed by the government in the Western District of North Carolina. The search warrants at issue were obtained and executed in February, March, and May 1998 for the following locations:

1. Cal's Mini Storage, Unit #91, 65 Old Peachtree Road,

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[1] The number 2:98M10 refers to the docket number allocated to this Warrant when it was filed in the United States District Court for the Western District of North Carolina.

Marble, North Carolina ("Cal's");

2. a single wide mobile home located on Caney Creek Road in Murphy, North Carolina ("Caney Creek"); and

3. a Gray 1989 Nissan Truck.

With respect to these three locations, on the following dates and times, the government obtained and executed the following warrants:

No.	Warrant/Location	Obtained	Executed
1	2:98M08 **Cal's Storage 1**	02/01/98 10:57 pm	02/02/98 10:00 am
2	2:98M09 **Caney Creek 1**	02/03/98 5:00 pm	02/04/98 7:52 am
3	2:98M10 **Cal's Storage 2**	02/04/98 12:15 pm	02/05/98 10:45 am
4	2:98M12 **Nissan Truck**	02/08/98 8:25 pm	02/09/98 4:42 pm
5	2:98M20 **Caney Creek 2**	03/05/98 3:15 pm	03/06/98 11:30 am
6	2:98M21 **Cal's Storage 3**	03/05/98 3:15 pm	03/06/98 9:00 am
7	2:98M46 **Cal's Storage 4**	05/13/98 4:55 pm	05/14/98 8:20 am

In a June 23, 2004 Order (Doc. 255), this Court directed counsel for Mr. Rudolph to file motions to suppress evidence on or before September 13, 2004. In compliance therewith, we hereby file this Motion to Suppress Evidence and Fruits Seized Pursuant to Warrant 2:98M10 (hereinafter "Warrant M10" or "the Warrant").

Warrant M10 fails to conform to the Fourth Amendment's

particularity requirement. In language that could hardly be any broader, the Warrant authorized the agents to seize "Property that constitutes the fruits, evidence, and instrumentalities of crimes against the United States." See, Ex. C at BH-CWA-000112.

In Fourth Amendment parlance, Warrant M10 is known as a "general warrant." It has long been the rule that "general warrants" are unconstitutional because they authorize government agents to do exactly what they did in this case - rummage through anything and everything, without guidance, without limitation, and, most importantly, without reference to the requirements of the particularity clause. Therefore, since Warrant M10 cannot withstand a Fourth Amendment particularity challenge, this Court should suppress the evidence and fruits seized pursuant to Warrant M10.

ARGUMENT

The Warrant Clause of the Fourth Amendment "states unambiguously that 'no warrants shall issue, but upon probable cause, supported by Oath or affirmation, and **particularly describing** the place to be searched, and **the persons or things to be seized.**'" Groh v. Ramirez, 124 S. Ct. 1284, 1289 (2004) (quoting U.S. Const. amend. IV; emphasis in original). According to the Court, "The requirement that warrants shall particularly describe the things to be seized makes general searches under

them impossible and prevents the seizure of one thing under a warrant describing another." Stanford v. Texas, 379 U.S. 476, 485 (1965) (quoting Marron v. United States, 275 U.S. 192, 196 (1927)).

In this country, such general warrants were "abhorred by the colonists." Coolidge v. New Hampshire, 403 U.S. 443, 467 (1971). Under the authority of a general warrant, government agents were authorized to engage in a "general, exploratory rummaging in a person's belongings." Id. It was precisely because of the colonists' "revulsion against a regime of writs of assistance" (a type of general warrant) that the Fourth Amendment was adopted. Stanford, 379 U.S. at 481-82 (recounting history of the Fourth Amendment). Accordingly, "[b]y limiting the authorization to search to the specific areas and things for which there is probable cause to search, the [particularity] requirement ensures that the search will be carefully tailored to its justifications, and will not take on the character of the wide-ranging exploratory searches the Framers intended to prohibit." Maryland v. Garrison, 480 U.S. 79, 84 (1987).

When determining whether a warrant satisfies the Fourth Amendment's particularity requirement, a reviewing court evaluates whether "the description in the warrant would permit an executing officer to reasonably know what items are to be

seized." United States v. Beaumont, 972 F.2d 553, 560 (5th Cir. 1992) (citing Steele v. United States, 267 U.S. 498, 503-04 (1925)). Significantly, recently the Court again made clear that the warrant itself, as opposed to any supporting documentation, must provide the particularity the plain language of the Fourth Amendment demands. "The fact that the *application* adequately described the 'things to be seized' does not save the *warrant* from its facial invalidity. The Fourth Amendment by its terms requires particularity in the warrant, not in the supporting documents." Groh, 124 S. Ct. at 1290 (emphasis in original). Therefore, "'the uniformly applied rule is that a search conducted pursuant to a warrant that fails to conform to the particularity requirement of the Fourth Amendment is unconstitutional.'" Id. at 1291 (quoting Massachusetts v. Sheppard, 468 U.S. 981, 988 n.5 (1984)).

I. WARRANTS OBTAINED BEFORE M10 WERE SUFFICIENTLY PARTICULAR.

In the chronology of warrants pertaining to Mr. Rudolph, Warrant M10 was the third warrant. In the first warrant, Warrant M08, the government alleged that Mr. Rudolph was improperly storing explosives in violation of a federal misdemeanor statute. According to the affiants, there was probable cause to believe that Mr. Rudolph was storing explosives in violation of 18 U.S.C. § 842(j). See, Ex. A. Although Warrant M08 is plagued with

numerous insurmountable constitutional infirmities, with respect to the particularity requirement, Warrant M08 appears sufficiently particular. It directed the executing officers to seize "explosive materials as defined in Title 18, U.S.C., Section 841, being unlawfully stored." Ex. A at BH-CWA-000070.

After obtaining Warrant M08, the government obtained Warrant M09. Like Warrant M08, Warrant M09 also sufficiently particular. It authorized the agents to seize the following:

> "Nails, batteries, knives and other cutting instruments; tools; records (in both digital and documentary form as detailed below); furniture, clothing, and household items capable of absorbing and retaining residue of high explosives or triggering devices; black powder, smokeless powder, lead azide, mercury fulminate, or other explosive powders; small metal tubes or other containers; and electric wires, light bulb filaments, rocket motor ignitors, pyrotechnic fuses, and safety fuses; receipts, notes, journals, diaries, calendars, address books, computer data bases, and correspondence related to the construction, storage, procuring, and testing of explosive devices and/or their component parts."

Ex. B at 000089.

On February 4, 1998, the government obtained Warrant M10. Like Warrant M08, Warrant M10 authorized government agents to search Cal's Mini-Storage Unit #91. However, unlike Warrants M08 and M09, Warrant M10 is devoid of <u>any</u> particularity.

II. WARRANT M10 IS DEVOID OF ANY PARTICULARITY.

Warrant M10 fails to limit the items the agents were

authorized to seize. In language that could hardly be any broader, Warrant M10 authorized the seizure of the following:

> "Property that constitutes the fruits, evidence, and instrumentalities of crimes against the United States"

See Ex. C at BH-CWA-000112.

Unlike Warrant M08, Warrant M10 failed to contain any reference to the crime under investigation. Unlike Warrant M09, Warrant M10 failed to list the types of items the agents were authorized to seize. In a literal sense, Warrant M10 authorized the agents to seize whatever they wanted. It is this type of warrant that was "abhorred by the colonists." Coolidge, 403 U.S. at 467.

Considering our constitutional history, it is hard to imagine that the government would utilize a warrant like Warrant M10. Legal research demonstrates that a warrant like this has never been upheld. By authorizing the agents to seize "[p]roperty that constitutes the fruits, evidence, and instrumentalities of crimes against the United States," Warrant M10 permitted exactly what the particularity clause of the Fourth Amendment prohibits: "[A] general, exploratory rummaging in a person's belongings." Coolidge, 403 U.S. at 467. Therefore, as the following cases demonstrate, application of the law of particularity to Warrant M10 leads to one inescapable conclusion:

There is simply no way that Warrant M10 can withstand a Fourth Amendment particularity challenge.

III. CASELAW OVERWHELMINGLY DEMONSTRATES THAT SUPPRESSION IS REQUIRED.

Any discussion of particularity within the context of Mr. Rudolph's case must begin with the Court's decision in Andresen v. Maryland, 427 U.S. 463 (1976). Perhaps more so than any other, Andresen unequivocally demonstrates that Warrant M10 cannot survive a particularity challenge.

In Andresen, the defendant was under investigation for his involvement with a real estate transaction concerning "Lot 13T in the Potomac Woods subdivision of Montgomery County." Id. at 465. The investigators obtained warrants to search two locations for "specified documents pertaining to the sale and conveyance of Lot 13T." Id. at 466. Unlike Warrant M10, the warrant in Andresen referenced the crime under investigation and it also specified the types of items the agents were authorized to seize.

After he was convicted, Andresen raised a number of issues before the appellate court, including the contention that a portion of the warrants failed to satisfy the Fourth Amendment's particularity requirement. Id. at 479. Andresen conceded "that the warrants for the most part were models of particularity." However, he argued that the warrants "were rendered fatally 'general' by the addition, in each warrant to the exhaustive list

of particularly described documents, of the phrase 'together with other fruits, instrumentalities and evidence of crime at this [time] unknown." Id. Andresen asserted that the "fruits, instrumentalities, and evidence of crime" language "must be read in isolation and without reference to the rest of the long sentence at the end of which it appears." Id. at 479-80.

Although the Court rejected Andresen's particularity challenge, its conclusion on this issue demonstrates that Warrant M10 is impermissibly broad. According to the Court, the "fruits, instrumentalities, and evidence of crime" portion of the warrant was limited by accompanying language:

> "[T]he challenged phrase must be read as authorizing only the search for and seizure of evidence relating to 'the crime of false pretenses with respect to Lot 13T.' ... The challenged phrase is not a separate sentence. Instead, it appears in each warrant at the end of a sentence containing a lengthy list of specified and particular items to be seized, all pertaining to Lot 13T. We think it clear from the context that the term 'crime' in the warrants refers only to the crime of false pretenses with respect to the sale of Lot 13T. The 'other fruits' clause is one of a series that follows the colon after the word 'Maryland.' All clauses in the series are limited by what precedes that colon, namely, 'items pertaining to ... lot 13, block T.' The warrants, accordingly, did not authorize the executing officers to conduct a search for evidence of other crimes but only to search for and seize evidence relevant to the crime of false pretenses and Lot 13T."

Andresen, 427 U.S. at 480-82.

As the foregoing demonstrates, the "Court's heavy reliance

on the Lot 13T limitation suggests that the omission of such a limitation would have been fatal to the warrant's validity." United States v. Cardwell, 680 F.2d 75, 77 (9th Cir. 1982) (ordering suppression of materials seized pursuant to an "overbroad" warrant and finding that "[t]he only limitation on the search and seizure of appellants' business papers was the requirement that they be the instrumentality or evidence of violation of the general tax evasion statute, 26 U.S.C. § 7201"). See also, United States v. Willey, 57 F.3d 1374, 1390 (5th Cir. 1995) (items seized were not outside the scope of search warrant because catch-all phrase related to "delineated violations" specifically enumerated in the warrant). Unlike Andresen, Warrant M10 contains no limiting language. Warrant 10 not only fails to contain a "list of specified and particular items to be seized," Andresen, 427 U.S. at 480, but it likewise fails to contain any reference to the crime under investigation. The warrant in Andersen did both; Warrant M10 does neither. In language that could hardly be any broader, Warrant M10 authorized the unrestricted seizure of almost anything and everything. Therefore, based on Andresen alone, Warrant M10 fails to satisfy the Fourth Amendment's requirement of particularity.

In addition to Andresen, a host of other cases support the position. In United States v. George, 975 F.2d 72, 74 (2nd Cir.

1992), the defendant challenged a warrant that was issued in connection with an investigation of an armed robbery at a McDonald's restaurant. Although the warrant (unlike Warrant M10) authorized the seizure of a number of specific items pertaining to the crime under investigation (i.e. armed robbery), including a burgundy purse and a burgundy shoulder bag that were stolen during the robbery, the warrant also directed the seizure of "**any other evidence relating to the commission of a crime.**" Id. (emphasis in original). With respect to this generalized language, which is nearly identical to the language used in Warrant M10, the Second Circuit stated:

> "The instant warrant's broad authorization to search for 'any other evidence relating to the commission of a crime' plainly is not sufficiently particular with respect to the things to be seized because it effectively granted the executing officers' 'virtually unfettered discretion to seize anything they [saw].'"

Id. at 75 (citation omitted).

> "Mere reference to 'evidence' of a violation of a broad criminal statute or general criminal activity provides no readily ascertainable guidelines for the executing officers as to what items to seize. See United States v. Maxwell, 920 F.2d 1028, 1033 (D.C. Cir. 1990) (wire fraud); United States v. Holzman, 871 F.2d 1496, 1509 (fraud) (9th Cir. 1989); United States v. Fucillo, 808 F.2d 173, 176-77 (1st Cir.) (stolen goods), cert. denied, 482 U.S. 905, 107 S. Ct. 2481, 96 L.Ed.2d 374 (1987); Coss v. Bergsgaard, 774 F.2d 402, 405 (10th Cir. 1985) (conspiracy); Cardwell, 680 F.2d at 77 (tax evasion). Absent some limitation curtailing the officers' discretion when executing the warrant, the safeguard of having a magistrate determine the scope of

> the search is lost. As a consequence, authorization to search for 'evidence of *a* crime,' that is to say, any crime, is so broad as to constitute a general warrant."

Id. at 76.

Warrant M10 is even weaker than the warrant in George for unlike George, Warrant M10 contained no delineation of the items the agents were authorized to seize. Thus, given the Second Circuit's conclusion that the George warrant "effectively granted the executing officers' 'virtually unfettered discretion to seize anything they [saw],'" id. at 75, this court should conclude that Warrant M10's "authorization to search for 'evidence of *a* crime ... is so broad as to constitute a general warrant." Id.

In addition to the George, Mr. Rudolph's position is also supported by the Fifth Circuit's decision in United States v. Beaumont, 972 F.2d 553, 560 (5th Cir. 1992). In Beaumont, the defendant raised a particularity challenge to a warrant that "contained only a generalized statement that 'evidence of the commission of a criminal offense as well as contraband abd [sic] the fruits of crime' were to be seized." The court began its analysis by referencing the fundamental and well-established principle that "[g]eneral warrants have long been abhorred in the jurisprudence of both England and the United States." Id. After discussing a number of cases, the court made the following observation, one which is particularly relevant to the instant

case:

> "[I]t is clear the cases require that in order for a warrant to meet the particularity requirement of the Fourth Amendment, the warrant itself must, **at a minimum**, contain something more than the absolute generality appearing on the face of the warrant at issue here."

Id. (emphasis in original).

Like the Second and Fifth Circuits, the Ninth Circuit has also rejected a warrant that was even stronger than Warrant M10. In Center Art Galleries-Haw., Inc. v. United States, the government obtained a number of warrants that authorized the seizure of "documents, books, ledgers, records and objects **which are evidence of violations of federal criminal law** including but not limited to: records of completed sales, customer correspondence including complaint files and refund-related documents." 875 F.2d 747, 749 (9th Cir. 1989) abrogated on other grounds, J.B. Manning Corp. v. United States, 86 F.3d 926, 927 (9th Cir. 1996). Although the warrants, unlike Warrant M10, identified the specific types of items the agents were authorized to seize, the Ninth Circuit nonetheless concluded that the highlighted portion of the warrants quoted above could not survive constitutional scrutiny:

> "We agree with the district court that the warrants are overbroad. The warrants' provision for the almost unrestricted seizure of items which are 'evidence of violations of federal criminal law' without describing the

> specific crimes suspected is constitutionally inadequate."

Id. at 750.

Similarly, in United States v. LeBron, 729 F.2d 533, 535 (8th Cir. 1984), the Eighth Circuit rejected a warrant that contained impermissibly broad language. In LeBron, federal and state agents were investigating the defendant for the "fencing of stolen property in the Omaha area." Id. The agents obtained a warrant authorizing them to seize three specific items, including two video cassette recorders with specific serial numbers and a large screen Panasonic television with a specific serial number, all of which had been reported stolen. Id. at 535-36. In addition, the warrant authorized the seizure of "any records which would document illegal transactions involving stolen property," and "any other property, description unknown, for which there exists probable cause to believe it to be stolen." Id. at 536.

At the beginning of the search, the agents observed the VCRs with the identical serial numbers to those contained in the warrant, as well as a Panasonic large screen television, although the serial number on the television did not match the serial number contained in the warrant. Id. "On the basis of the presumed authority of the warrant, the officers continued their search of the house." Id. While searching LeBron's bedroom,

agents found approximately 262 firearms in an overhead storage closet. Id. Thereafter, LeBron was indicted and convicted in federal court "for knowingly possessing firearms that had not been registered to him." Id. at 535.

On appeal, LeBron argued that "other than the three specified items, the warrant fails to describe the property to be seized with the particularity required by the Fourth Amendment." Id. at 536. During oral argument before the Eighth Circuit, the government conceded that the portion of the warrant which authorized the seizure of other property "for which there exists probable cause to believe it to be stolen" was "impermissibly broad." Id. The Eighth Circuit agreed:

> "The warrant's authorization of a search for 'other stolen property' allows a general search, contrary to the Fourth Amendment. A valid warrant should describe the things to be taken and the place to be searched with particularity such that it provides a guide to the exercise of informed discretion of the officer executing the warrant."

Id. at 536.

Despite conceding that the portion of the warrant pertaining to "other property" was invalid, the government nonetheless argued that the firearms were properly seized pursuant to the clause in the warrant that authorized the seizure of "any records which would document illegal transactions involving stolen property." Id. at 536 and 537. According to the government,

since the agents were looking for records when the firearms were discovered, the firearms were properly admitted under the plain view doctrine. Id. at 537. The Eighth Circuit disagreed, and rejected the government's contention that the "records clause" was sufficiently particular:

> "The warrant in the instant case, without more, authorized a search for 'any records which would document illegal transactions involving stolen property.' There is no attempt to particularize the description of the property or of the records themselves. The only limiting factor is the reference to 'stolen property.' As earlier discussed, this generic classification is not sufficient to provide any guidance to an executing officer. Absent as well is any explanation of the method by which the officers were to distinguish such records from any documents relating to legal transactions. ... The record also reveals that there was nothing in the warrant or affidavit to substantiate the contention that there even would be such records in LeBron's home. In fact, the officers searched and seized general papers, documents, credit cards, and checks that bore no direct relation to stolen property. The records clause allowed, and resulted in, an indiscriminate rummage of the entire home. We hold that the records clause did not provide adequate protection against an unwarranted intrusion into the defendant's personal rights. Consequently, it authorized an impermissibly broad search of LeBron's home. The discovery of firearms was the product of the unconstitutional search of LeBron's residence."

LeBron, 729 F.2d at 539.

Finally, in addition to the opinions from the Supreme Court, the Second, Fifth, Eighth, and Ninth Circuits, Mr. Rudolph's position is also bolstered by the Seventh Circuit's decision in United States v. Stefonek, 179 F.3d 1030 (7th Cir. 1999). In

Stefonek, the Court addressed the constitutional validity of a warrant which authorized the agents to seize "'evidence of crime.'" Id. at 1032. Like in the instant case, the warrant did not specify the crime under investigation or contain any specificity regarding the items that could be seized. Without hesitation, the Seventh Circuit concluded that the warrant's description "did not satisfy the Fourth Amendment's requirement that a search warrant 'particularly describ[e] ... the things to be seized.'" Id. at 1032-33 (citations omitted). According to the Seventh Circuit, the description in the warrant was so "open-ended" that "the warrant can only be described as a general warrant, and one of the purposes of the Fourth Amendment was to outlaw general warrants." Id.

The cases cited above are just a few among the many that provide unequivocal support for defendant's position. These cases teach that when a warrant uses language like the language used in Warrant M10, it cannot withstand a particularity challenge. In addition to the cases cited above, countless other cases exist which demonstrate that Warrant M10 is an unconstitutional general warrant. See also, United States v. Bridges, 344 F.3d 1010, 1016 (9th Cir. 2003) ("[i]n light of the expansive and open-ended language used in the search warrant to describe its purpose and scope, we hold that this warrant's

failure to specify what criminal activity was being investigated, or suspected of having been perpetrated, renders its legitimacy constitutionally defective"); United States v. Kow, 58 F.3d 423, 427 (9th Cir. 1995) (a warrant which failed to specify the suspected criminal activity invalid and noting that the Ninth Circuit had "criticized repeatedly the failure to describe in a warrant the specific criminal activity suspected"); United States v. Clark, 31 F.3d 831, 836 (9th Cir. 1994) (holding a warrant that authorized the seizure of "fruits and instrumentalities of [a] violation of Title 21, U.S.C. § 841(a)(1)" facially "overbroad" because the "warrant provide[d] no guidance to the executing officers concerning the items to be sought or seized"); United States v. Morris, 977 F.2d 677, 682 (1st Cir. 1992) ("the catch-all phrase authorizing seizure of 'any other object in violation of the law' is impermissibly broad"); United States v. Leary, 846 F.2d 592, 601 (10th Cir. 1988) (finding a particularity violation and affirming district court's motion to suppress evidence seized pursuant to a warrant which authorized the seizure of a long list of business records related to "'the purchase, sale and illegal exportation of materials in violation of the' federal export laws."); United States v. Cardwell, 680 F.2d 75, 77 (9th Cir. 1982)(reversing district court and ordering suppression of materials seized

pursuant to an "overbroad" warrant, finding that "[t]he only limitation on the search and seizure of appellants' business papers was the requirement that they be the instrumentality or evidence of violation of the general tax evasion statute, 26 U.S.C. § 7201."); United States v. Abrams, 615 F.2d 541, 542-43 (1st Cir. 1980)(concluding that a warrant which alleged a violation of 18 U.S.C. § 1001 and authorized the seizure of specified records was "exactly the kind of investigatory dragnet that the fourth amendment was designed to prevent."); In re Lafayette Academy, 610 F.2d 1, 3 (1st Cir. 1979) (warrant which authorized the "seizure of most every sort of book or paper ... limited only by the qualification that the seized item be evidence of violations of ...' 18 U.S.C. 286, 287, 371, 1001 and 1014" failed to comply with the particularity requirement)

CONCLUSION

It is a fundamental principle of Fourth Amendment law that the particularity requirement prohibits "[a] general, exploratory rummaging in a person's belongings." Coolidge, 403 U.S. at 467. In the chronology of warrants pertaining to Mr. Rudolph, Warrant M10 was the third Warrant out of seven. Although the first, second, fourth, and seventh warrants appear to be sufficiently particular, Warrant M10 was not even close. In language that could hardly be any broader, Warrant M10 authorized the agents to

seize "property that constitutes the fruits, evidence, and instrumentalities of crimes against the United States." Plenty of cases exist which have invalidated warrants for failing to reference the crime under investigation or the specific items the agents were authorized to seize. Warrant M10 did neither. It failed to reference any crime at all or specify the items subject to seizure. In simple terms, Warrant M10 allowed federal agents to do what the Fourth Amendment's requirement of particularity prohibits: Rummage through anything and everything, without guidance, without limitation, and, most importantly, without reference to the requirements of the particularity clause. Therefore, because the "'uniformly applied rule is that a search conducted pursuant to a warrant that fails to conform to the particularity requirement of the Fourth Amendment is unconstitutional,'" Groh, 124 S. Ct. at 1291, we respectfully request that the Court suppress the evidence and fruits seized pursuant to Warrant M10.

September 13th, 2004 Respectfully Submitted,

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CERTIFICATE OF SERVICE

This is to certify that a copy of the foregoing has been served upon the following by mailing the same by first class United States mail, properly addressed and postage prepaid, on this 13th day of September 2004 to:

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